

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF BIG RIVERS)	
ELECTRIC CORPORATION FOR)	
APPROVAL OF THE 1998)	
AMENDMENTS TO STATION TWO)	CASE NO. 98-267
CONTRACTS BETWEEN BIG RIVERS)	
ELECTRIC CORPORATION AND THE)	
CITY OF HENDERSON, KENTUCKY)	
AND THE UTILITY COMMISSION OF)	
THE CITY OF HENDERSON)	

O R D E R

By Order dated April 30, 1998 in Case No. 97-204,¹ the Commission directed the applicants therein, Big Rivers Electric Corporation ("Big Rivers") and certain subsidiaries of LG&E Energy Corp. ("LEC"), to file by May 29, 1998 copies of the final drafts of all transaction documents. A substantial number of the transaction documents were filed on May 29, 1998, along with a motion on behalf of LEC requesting: 1) an extension to June 5, 1998 to file the remaining documents; and 2) the establishment of a procedural schedule to conclude this document review in sufficient time to allow LEC and Big Rivers to close the lease transaction by July 1, 1998.

¹ The Application of Big Rivers Electric Corporation, Louisville Gas and Electric Company, Western Kentucky Energy Corp., Western Kentucky Leasing Corp., and LG&E Station Two Inc. For Approval of Wholesale Rate Adjustment for Big Rivers Electric Corporation and For Approval of Transaction.

LEC subsequently filed on June 10, 1998 additional transaction documents and an amendment to its June 5, 1998 motion to request a conclusion of the document review to allow a closing of the lease transaction by July 15, 1998.

Based on the motion, the Commission finds good cause to extend the date for filing the transaction documents. However, since LEC's cover letter accompanying the documents filed on June 10, 1998 indicates that additional documents are to be filed by other parties, we will extend the due date to June 15, 1998. Consistent with the Commission's statement in its April 30, 1998 Order in Case No. 97-204 that this document review should take no more than 30 days, the procedural schedule attached hereto as Appendix A is designed to meet that time limit.

IT IS THEREFORE ORDERED that:

1. The April 30, 1998 Order in Case No. 97-204 is modified to the extent that all transaction documents shall be filed by June 15, 1998.
2. The procedural schedule attached hereto as Appendix A shall be followed in this case.
3. Big Rivers shall file with the Commission no later than June 19, 1998 the original and 10 copies of the information set forth in Appendix B hereto with copies to all parties of record. Each copy of the data requested should be placed in a bound volume with each item tabbed. When a number of sheets are required for an item, each sheet should be appropriately indexed, for example, Item 1(a), Sheet 2 and 6. Include with each response the name of the witness who will be responsible for responding to questions relating to the information provided. Careful attention should be given to copied material to ensure that it is legible.

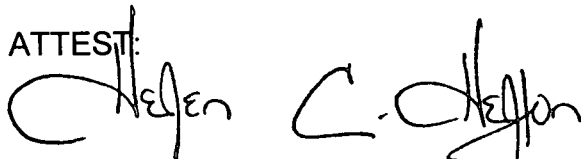
Done at Frankfort, Kentucky, this 12th day of June, 1998.

PUBLIC SERVICE COMMISSION



For the Commission

ATTEST:



Executive Director

APPENDIX A

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC
SERVICE COMMISSION IN CASE NO. 98-267 DATED June 12, 1998.

Requests for information to a party shall
be filed no later than.....6/23/98

Responses to requests for
information shall be filed no later than.....6/30/98

Each party shall file a list of the name and title of
each witness to be called at the public hearing to
either support or oppose the transaction documents
no later than.....7/01/98

Public Hearing is to begin at 9:00 a.m., Eastern
Daylight Time, in Hearing Room 1 of the Commission's
offices at 730 Schenkel Lane, Frankfort, Kentucky.....7/06/98

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 98-267 DATED June 12, 1998.

1. The cash payments to be made by and to various entities at closing and during the term of the lease agreement are a key part of this transaction. Provide a comparative schedule which reflects the payments to be made by Big Rivers and LG&E Energy Corp. ("LEC") at closing and throughout this agreement as contemplated by the documents filed with the Commission as of February 27, 1998 and as contemplated by the documents filed on May 29, 1998 or additional documents that will be filed. A thorough explanation of each change should be provided.

2. Identify and discuss the reason for any payment or other consideration not disclosed in the transaction documents that Big Rivers and LG&E will be required to make as a result of the modifications to the agreement.

3. Refer to the Station Two Documents, filed with the Commission on May 15, 1998, Exhibit 1, section entitled "All Contracts."

a. Indicate the respective terms for the various agreements covered under the "All Contracts" section prior to this amendment.

b. Indicate the estimated operating life of Station Two and state the estimated final calendar year of operation for Station Two.

c. Provide documentation received from the Rural Utilities Service ("RUS") approving the 1998 Amendments. If approval has not been received, indicate when the approvals are expected.

4. Refer to the Station Two Documents, filed with the Commission on May 15, 1998, Exhibit 1, section entitled "Power Sales Contract."

a. Provide a redlined version of Section 3.4, showing all additions and deletions to the section.

b. Provide a detailed explanation of the reason(s) for the revisions to Section 3.4.

c. Explain the purpose and provide a detailed explanation of the reason(s) for the new Sections 3.8, 19.2, 19.3, and 28.

5. Refer to the Station Two Documents, filed with the Commission on May 15, 1998, Exhibit 1, section entitled "Joint Facilities Agreement."

a. Provide a redlined version of Section 3.3, showing all additions and deletions to the section.

b. Provide a detailed explanation of the reason(s) for the revisions to Section 3.3.

6. Refer to the Station Two Documents, filed with the Commission on May 15, 1998, Exhibit 1, section entitled "System Reserves Agreement." Explain the purpose and provide a detailed explanation of the reason(s) for the new Section 2.1.

7. The Commission's April 30, 1998 Order, page 45, paragraph No. 8, required the Applicants to file the final drafts of the transaction documents supported by a clear identification of each change made and a detailed explanation of each change to the versions on file with the Commission as of February 27, 1998. While the documents filed on May 29, 1998 clearly identify each change, the accompanying

explanations are labeled only as addressing "substantive changes," "significant structural changes," or "conforming changes." For each change identified, provide a detailed explanation of the reasons why the change was made.

8. Refer to the documents filed with the Commission on May 29, 1998, Volume 1, Tabs 1 and 1A, the "Amended and Restated Guarantee Agreement" and the "New Guarantee Agreement."

a. Indicate which one of the guarantee agreements is considered to be "in force" and explain the basis for this conclusion.

b. Since the New Guarantee Agreement was executed in conjunction with the New Participation Agreement, explain why the Amended and Restated Guarantee Agreement was filed in this proceeding.

c. The second full paragraph of the New Guarantee Agreement states that nothing contained in that agreement shall be deemed to supersede, replace, or otherwise affect the March 18, 1998 Amended and Restated Guarantee Agreement, which shall continue in force and effect in accordance with its terms. Given this provision, explain the purpose of the New Guarantee Agreement and why it has been executed.

9. Refer to the documents filed with the Commission on May 29, 1998, Volume 1, Tab 2, the document summary sheet for the "New Participation Agreement."

a. It is stated on the document summary sheet that "Changes to Schedules which are intended to be updated prior to closing have not been noted and will be updated as intended."

(1) Provide a listing of each schedule attached to the New Participation Agreement for which it is anticipated there will be a revision or update. Include a detailed summary explaining the nature of the anticipated revision or update.

(2) If any changes or revisions have been made to the schedules which are not reflected in the version on file with the Commission as of February 27, 1998, identify each change and provide a detailed explanation of the reason for each change.

b. Why was specific reference made to Schedule 9.2 in the document summary sheet?

c. Provide a detailed summary explaining the nature of each anticipated revision or update to Schedule 9.2.

10. Refer to the documents filed with the Commission on May 29, 1998, Volume 1, Tab 2, the New Participation Agreement.

a. Article 2 addresses the participation effective date. Indicate the status of each event described in Article 2.

b. Article 14, Section 14.7, addresses the parties' opacity indemnity. Prepare a summary of this section which describes the obligations and responsibilities of Big Rivers and the LEC affiliates.

c. Article 17 addresses the termination date of the agreement. Generally, the termination date was changed from September 1, 1999 to December 31, 1998. Explain the specific reason(s) for this change. (A response of "resulting from negotiations" is not acceptable.)

d. Article 20, Section 20.6, addresses the amount of the annual capital budget for the first partial year and subsequent two full years. Compare the amounts contained in this section with the corresponding amounts contained in the Big Rivers' financial model version identified as SUP-11.

e. Article 21, Section 21.13, addresses the rights and obligations of the parties under the Original Participation Agreement.

(1) Did the Original Participation Agreement contain provisions which incorporated the resolution of the unforeseen cost issue?

(2) If the Original Participation Agreement were revived under the terms of Section 21.13, how would the parties be able to operate under a participation agreement which did not reflect the Commission's acceptance of the resolution of the unforeseen cost issue?

11. Refer to the documents filed with the Commission on May 29, 1998, Volume 1, Tab 2, Schedule 3.1 of the New Participation Agreement. This schedule deals with conditions precedent to the Phase I effective date. Item I.23 of that schedule states that if LG&E Energy Marketing, Inc. ("LEM") is responsible for securing transmission service from Big Rivers' transmission system in order to deliver energy pursuant to the LEM/Henderson Union Agreement and LEM/Green River Agreement, the cost of that service will not exceed \$.98/KW/month through December 31, 2006 or \$1.02/KW/month from January 1, 2007 through December 31, 2011. This item further provides that contributions may be made by other parties as may be necessary to assure Big Rivers of full recovery of its applicable transmission charges.

a. Indicate who the "other parties" may be that could provide contributions to allow Big Rivers full recovery of its transmission charges.

b. Assume that the fixed rates to LEM were different from the rates contained in Big Rivers' Open Access Transmission Tariff ("OATT"), on file with the Federal Energy Regulatory Commission ("FERC"). Given this assumption, explain how Big Rivers would not be in violation of FERC Order No. 888. If Big Rivers is aware of specific sections of FERC Order No. 888 that authorize this situation, provide the appropriate citations to those sections.

12. Refer to the documents filed with the Commission on May 29, 1998, Volume 2, Tab 6, the Lease and Operating Agreement.

a. Concerning Article 2, Sections 2.3.2.(f)(i) and 2.3.2.(f)(ii), explain in detail why the termination of the Station Two Agreement, which results in a reduction in the monthly margin payment, apparently triggers the sale by Big Rivers to LEM of bundled ancillary services for resale to either Henderson Union Electric Cooperative Corporation ("Henderson Union") or Green River Electric Corporation ("Green River") for the benefit of the Smelters.

b. Explain in detail why Section 2.3.2.(f)(i) contains the additional restriction relating to the provisions of the Station Two Power Sales Agreement while Section 2.3.2.(f)(ii) does not.

13. Refer to the documents filed with the Commission on May 29, 1998, Volume 2, Tab 8, the Transmission Services and Interconnection Agreement, page 25 of 69. Section 6.5.2. appears to state that, so long as either the full or reduced monthly

margin payments from LEM are made, Big Rivers will deem the full cost of the Member Transmission, which relates to the LEM/Green River Agreement and the LEM/Henderson Union Agreement, to have been paid at the then applicable OATT rates.

a. Is this a reasonable summary of the text presented on page 25 of 69? If not, provide a summary of the text shown on this page.

b. Under the provisions of Section 6.5.2., has Big Rivers agreed to fixed transmission rates to be charged to LEM for Member Transmission, regardless of how comparable service under Big Rivers' OATT would be priced?

(1) If yes, explain why such a provision is fair and reasonable to Big Rivers' other transmission customers.

(2) If no, explain in detail what Big Rivers has agreed to concerning the transmission rates to be charged LEM for Member Transmission.

c. Under the provisions of Section 6.5.2., can LEM be charged more than \$.98/KW/month through December 31, 2006 or \$1.02/KW/month thereafter for Member Transmission? Explain the response.

d. If the transmission rates charged to LEM under Section 6.5.2. for Member Transmission are different than Big Rivers' OATT rates for comparable service, explain in detail how such an arrangement is permissible under FERC Order No. 888. If Big Rivers is aware of specific sections of FERC Order No. 888 that authorize this situation, provide the appropriate citations to those sections.

e. If the transmission rates charged to LEM under Section 6.5.2. for Member Transmission are lower than Big Rivers' OATT rates for comparable service,

explain in detail how Big Rivers will achieve full recovery of its transmission system costs.

f. Provide a summary of Section 2 of Big Rivers' OATT and explain how the 572 MW of network service included in the Member Transmission is a beneficiary of that section.

14. Refer to the documents filed with the Commission on May 29, 1998, Volume 2, Tab 8, the Transmission Services and Interconnection Agreement, page 28 of 69. Section 6.5.3. states that Big Rivers' commitments to LEM as set forth in Section 6.5.2. will remain in effect for the term of the Transmission Services and Interconnection Agreement and will not be subject to change through application to FERC. Explain in detail how Section 6.5.3. is fair and reasonable to Big Rivers' other transmission customers, in light of what appears to be special treatment being afforded to LEM.

15. Refer to the documents filed with the Commission on May 29, 1998, Volume 2, Tab 8, the Transmission Services and Interconnection Agreement, page 29 of 69. Explain in detail why Section 6.5.4. is necessary and how the inclusion of the provisions of that section are fair and reasonable to Big Rivers' other transmission customers.

16. Refer to the documents filed with the Commission on May 29, 1998, Volume 2, Tab 8, the Transmission Services and Interconnection Agreement, page 69 of 69. Provide Schedule 15.1, "Liens, Encumbrances and Rights to Use the Transmission System As of []."

17. Refer to the documents filed with the Commission on May 29, 1998, Volume 3, Tab 8A, Big Rivers' OATT. Are the provisions of Sections 6.5.2. and 6.5.3. of the Transmission Services and Interconnection Agreement referenced in the OATT?

- a. If yes, provide the specific citations in the OATT.
- b. If no, explain in detail why the LEM transmission arrangements are not referenced in the OATT.

18. Refer to the documents filed with the Commission on May 29, 1998, Volume 4, Tab 9, the Mortgage and Security Agreement. Provide Exhibit C - Description of Real Property; Exhibit D - Real Property Leases; and Exhibit E - Permitted Liens and Other Permitted Title Exceptions. These exhibits were referenced as "attached" but were not provided.

19. Refer to the documents filed with the Commission on May 29, 1998, Volume 4, Tab 14, the Second Amendment to Interim Marketing Agreement.

- a. Provide a schedule of the payments due under the First Amendment to the Interim Marketing Agreement.
- b. The document summary sheet indicates the addition of a "marketing payment" was part of the overall settlement of issues related to environmental indemnities. Explain in detail why payments to resolve environmental issues have been classified as marketing payments.
- c. Provide copies of any studies, reports, economic analyses, or memorandum prepared by or for Big Rivers, or utilized by Big Rivers, in determining its range of exposure for environmental non-compliance, the potential costs for that range

of exposure, and the reasonableness of a \$5 million to \$7 million payment to LEC for its assumption of that risk.

d. Does Big Rivers presently have sufficient cash on hand to make this marketing payment without incurring additional debt? Include an analysis which shows the impact on Big Rivers of a \$7 million marketing payment.

20. Refer to the documents filed with the Commission on May 29, 1998, Volume 6, Tab 25, the Restated Mortgage and Security Agreement. Explain the purpose of the 1985 Interest Surety Policy and why this item has been added since February 27, 1998.

21. Refer to the documents filed with the Commission on May 29, 1998, Volume 6, Tab 28, Fifth Supplemental Indenture for 1983 Pollution Control Bonds. Explain the changes referenced in the Article I definition of "Maximum Rate." Include a discussion of why the changes occurred.

22. Refer to the documents filed with the Commission on May 29, 1998, Volume 6, Tab 30, the New RUS Agreement. Explain in detail the purpose of Section 5.9 - Limitation on Certain Payments, and why this addition was needed.

23. Refer to the documents filed with the Commission on May 29, 1998, Volume 6, Tab 31A, the New RUS Note. Explain in detail why the definition of a "Rate Reduction" was revised and why this addition was needed.

24. Refer to the documents filed with the Commission on May 29, 1998, Volume 6, Tab 32, the First Supplemental Indenture for 1985 Pollution Control Bonds.

Explain the changes referenced in the Article I definition of "Variable Rate." Include a discussion of why the changes occurred.

25. Refer to the documents filed with the Commission on May 29, 1998, Volume 7, Tab 36, the Reimbursement Agreement for Series 1985 Pollution Control Bonds. Explain the purpose of the Fee Surety Policy and why this item has been added since February 27, 1998.

26. Refer to the documents filed with the Commission on May 29, 1998, Volume 7, Tab 40, the Mortgage and Security Agreement (LEM Mortgage). Provide Exhibit C - Description of Real Property; Exhibit D - Real Property Leases; and Exhibit E - Permitted Liens and Other Permitted Title Exceptions. These exhibits were referenced as "attached" but were not provided.